

Federal Communications Commission

DOCKE F. EMBRY ORIGINAL
DA 95-582

SECTION

Mar 29 9 05 AM '95
Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-82

In the Matter of

Amendment of Section 73.202(b). RM-8487
Table of Allotments.
FM Broadcast Stations.
(Spencer and Sac City, Iowa,
St. James, Minnesota)

REPORT AND ORDER (Proceeding Terminated)

Adopted: March 22, 1995; Released: March 28, 1995

By the Chief, Allocations Branch:

1. At the request of Iowa Great Lakes Broadcasting Company, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 9 FCC Rcd 3410 (1994), proposing the substitution of Channel 285C2 for Channel 285A at Spencer, Iowa, and the modification of Station KIGL(FM)'s license to specify operation on the higher class channel. To accommodate the allotment of Channel 285C2 at Spencer, the *Notice* also proposed the substitution of Channel 268A for Channel 285A at St. James, Minnesota, and the modification of Station KXAX's license accordingly, as well as the deletion, without replacement, of vacant and unapplied-for Channel 284A at Sac City, Iowa. Comments were filed by the petitioner, Curtis J. Rogers ("Rogers"), and Kevin Lein ("Lein"). Reply comments were filed by the petitioner.¹

2. Rogers, in his comments, states an intention to apply for Channel 284A at Sac City and thus requests that the channel not be deleted as proposed in the *Notice*. Lein also requests the retention of Channel 284A at Sac City, pointing out that on August 1, 1994, he filed an application for use of the channel (BPH-940801MA). He states that it is long-standing Commission policy not to delete a channel in which an interest has been expressed absent a compelling showing. In this case, Lein points out that Channel 284A would provide Sac City with its first local aural service while the allotment of Channel 285C2 to Spencer would only result in an improvement in existing service. Therefore, he argues that the retention of Channel 284A at Sac City is to be preferred under the Commission's allotment priorities.²

¹ After the record closed, Lein filed a "Statement for the Record" and the petitioner filed an "Additional Statement for the Record" supporting the acceptance of Lein's Statement. We will not accept these late-filed pleadings. The Commission's Rules do not contemplate the filing of pleadings beyond the comment periods specified in the *Notice* and, in light of the action taken herein, provide no information of decisional sig-

3. The petitioner filed comments supporting the channel allotments specified in the *Notice*. However, in light of the application for Channel 284A at Sac City, petitioner alternatively proposed three allotment schemes. It also stated its intention to apply for whatever channel is ultimately allotted to Spencer. The first option is as follows:

Option I

City	Channel No.	
	Present	Proposed
Sac City, Iowa	284A	240A
Spencer, Iowa	285A, 299C1	285C2, 299C1
St. James, Minnesota	263C2, 285A	263C2, 268A

According to the petitioner, Channel 240A can be allotted to Sac City in lieu of Channel 284A, thus providing a channel for use by Lein and any other interested party. Petitioner states that the channel can be allotted to Sac City in compliance with the Commission's minimum distance separation requirements even though there is a short-spacing to Channel 240C2 at Estherville, Iowa. It submits that the license of Station KILR-FM, Estherville, was modified in rule making to specify operation on Channel 240C2 in lieu of Channel 240A and a construction permit (BPH-890110IC) was issued specifying Class C2 facilities. See 3 FCC Rcd 5219 (1988). However, petitioner points out that this permit was cancelled by the Commission on August 3, 1992, and Station KILR-FM now seeks permission to operate on Channel 240 as a 6 kW Class A station (BMLH-901029KA). The substitution of Channel 268A for Channel 285A at St. James would also enable Station KXAX to operate with 6 kW power. The second option is as follows:

Option II

City	Channel No.	
	Present	Proposed
Sac City, Iowa	284A	284A
Spencer, Iowa	285A, 299C1	285C3, 299C1
St. James, Minnesota	263C2, 285A	263C2, 268A

Option II would allow Station KIGL(FM) at Spencer to upgrade from Class A to Class C3. While it would still require that Station KXAX at St. James operate on Channel 268A instead of its present Channel 285A, it would not require a change of channel at Sac City. Option III is as follows:

nificance.

² The allotment priorities are as follows: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

Option III

City	Channel No.	
	Present	Proposed
Sac City, Iowa	284A	284A
Spencer, Iowa	285A, 299C1	285A, 299C1
St. James, Minnesota	263C2, 285A	263C2, 268A

Option III would not result in a change of class for Station KIGL(FM) but would enable both KIGL(FM) and KXAX to operate as 6 kW Class A stations. The only channel change required by Option III is the substitution of Channel 268A for Channel 285A at St. James.

DISCUSSION

4. After careful consideration of the information before us, we conclude that the public interest would be served by substituting Channel 285C3 for Channel 285A at Spencer, substituting Channel 268A for Channel 285A at St. James, and retaining Channel 284A at Sac City. It is long-established Commission policy not to delete a channel from a community where interest in its use has been expressed absent a compelling public interest benefit. Here, we have both an application filed by Lein as well as a stated intention to file an application by Rogers. We have been provided with no information which would lead us to find that the improvement of an existing service from a Class A to a Class C2 rather than a Class C3 at Spencer would better serve the public interest than the activation of a first local aural service at Sac City. Further, the substitution of Channel 284A at Sac City with Channel 240A is not technically viable since would be short-spaced to Channel 240C2 at Estherville, Iowa, which is reserved for Station KILR-FM. While it is true that Station KILR-FM's 1989 Class C2 construction permit was cancelled, the Commission has not determined that Station KILR-FM is ineligible to submit a new construction permit application specifying operation on Channel 240C2. The modification of Station KIGL(FM)'s license to specify the Class C3 channel will still enable the station to expand its coverage area, thus improving its service, and also enable Station KXAX to increase its power from 3 kW to 6 kW.

5. Rogers Broadcasting, Inc. has not responded to the *Order to Show Cause*. Therefore, we deem it to have consented to the modification of its license for Station KXAX. Pursuant to Commission policy, the petitioner is required to reimburse the licensee of Station KXAX for the reasonable costs incurred in changing its operating frequency and has stated its willingness to do so. See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

Technical Summary

6. Channel 285C3 can be allotted to Spencer in compliance with the Commission's minimum distance separation requirements with a site restriction of 17 kilometers (10.5 miles north to avoid a short-spacing to unoccupied but applied-for Channel 284A at Sac City, Iowa, and to accom-

modate petitioner's desired transmitter site.³ Channel 268A can be allotted to St. James, Minnesota, in compliance with the Commission's minimum distance separation requirements at the presently licensed transmitter site of Station KXAX.⁴ We recognize that Channel 268A at St. James conflicts with the present operation of Station KAYL-FM, Storm Lake, Iowa, on Channel 268C1. However, pursuant to the *Report and Order* in MM Docket 92-155, Station KAYL-FM has been ordered to modify its operation to Channel 269C1. See 8 FCC Rcd 4086 (1993). Therefore, since its continued operation on Channel 268C1 conflicts with the decision herein, we shall send a copy of this decision to Northwest Iowa Broadcasting Corp., licensee of Station KAYL-FM. Issuance of a license to Station KXAX, St. James, may be withheld until Station KAYL-FM is licensed on Channel 269C1 in accordance with MM Docket 92-155.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **May 12, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Spencer, Iowa	285C3, 299C1
St. James, Minnesota	263C2, 268A

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Rogers Broadcasting, Inc., for Station KXAX, St. James, Minnesota, IS MODIFIED to specify operation on Channel 268A in lieu of Channel 285A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KXAX's license, BLH-830909AB, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-830909AB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Iowa Great Lakes Broadcasting Company, Inc., for Station KIGL(FM), Spencer, Iowa, IS MODIFIED to specify operation on Channel 285C3, in lieu of Channel 285A, subject to the following conditions:

³ The coordinates for Channel 285C3 at Spencer are 43-17-45 North Latitude and 95-10-30 West Longitude.

⁴ The coordinates for Channel 268A at St. James are 44-03-15 North Latitude and 94-39-40 West Longitude.

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following licensees, as follows: Rogers Broadcasting, Inc., P.O. Box 465, St. James, MN 56081 (licensee of Station KXAX), and Northwest Iowa Broadcasting Corp., P.O. Box 1037, Storm Lake, IA 50588 (licensee of Station KAYL-FM).

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau